IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-5206

HARRY ROBERTS,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF THE RESPONDENT OF AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC.; THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.; THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC.; AND THE NATIONAL SHERIFFS' ASSOCIATION, INC.

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Americans for Effective Law Enforcement, Inc.; the International Association of Chiefs of Police, Inc.; the National District Attorneys Association, Inc.; and the National Sheriffs' Association Inc. respectfully move this court for leave to file a brief, *amici curiae,* in support of the respondent in the instant case. This motion is made pursuant to Rule 42 of the Supreme Court Rules. Counsel for the respondent, State of Louisiana, by its attorney, the District Attorney of Orleans Parish, New Orleans, Louisiana, has consented in writing to our filing; the

petitioner, Harry Roberts, by his attorney, Garland R. Rolling, has refused to consent to our filing. Accordingly, we move this Court directly for leave to file. Letters from counsel for the petitioner and respondent have been filed with the Clerk of this Court. The interest of the *amici curiae* and our reasons for desiring to file are set forth below.

INTEREST OF THE AMICI CURIAE.

Americans for Effective Law Enforcement, Inc. (AELE) is a national, not-for-profit citizens organization incorporated under the laws of the State of Illinois. As stated in its by-laws, the purposes of AELE are:

1. To explore and consider the needs and requirements for the effective enforcement of the criminal law;
2. To inform the public of these needs and requirements, to the end that the courts will administer justice based upon a due concern for the general welfare and security of law abiding citizens;
3. To assist the police, the prosecution, and the courts in promoting a more effective and fairer administration of the criminal laws.

In furtherance of these objectives, AELE seeks to represent in our courts, nationwide, the concern of the average citizen with the problems of crime and of police effectiveness to deal with crime.

The International Association of Chiefs of Police, Inc. (IACP) is a not-for-profit professional association and represents over 7,000 chiefs and top executives of American police departments and other law enforcement agencies in all 50 states and in 57 foreign countries. The IACP serves the law enforcement profession and the public interest by advancing the art of police service. Its aims are to foster police cooperation and the exchange of information and experience among police administrators throughout the world, and to encourage

adherence of all police officers to high professional standards of performance and conduct.

The IACP Legal Officers' Section is the only nationally organized body of police legal advisors. They serve as house counsel to approximately 300 law enforcement agencies representing more than half of the police officers and sheriff's deputies in the United States. The majority of them actively participate in section activities.

The National District Attorneys Association, Inc. (NDAA) is a not-for-profit, non-political, tax exempt corporation composed of approximately 6,000 members representing all 50 states. The purposes of the NDAA are, *inter alia*, to improve and facilitate the administration of justice in the United States and to promote the study of law and legal institutions.

To effectuate these aims, the NDAA for many years has utilized an *Amicus Curiae* Committee to file briefs in cases of national importance in the United States Supreme Court. The NDAA seeks to make known the views of all prosecutors in the United States and to bring before this Court their positions on matters affecting the discharge of the duties of the prosecutor.

The National Sheriffs' Association is a not-for-profit, professional organization with nearly 37 years of progressive assistance to federal, state, and local law enforcement, courts, corrections, and other criminal justice agencies. Its more than 53,000 members in all states and several foreign nations include not only the more than 3,000 sheriffs of America but also encompass other criminal justice administrators and practitioners at virtually every level of jurisdiction.

The NSA conducts, frequently in conjunction with colleges and universities, scores of educational, training, and informative conferences, seminars, and courses each year. The Association has conducted nationwide crime prevention programs and has worked with state and local governments in promulgating mutual aid concepts and contracts for more effective enforcement of the laws.

The interest of *amici* in the instant case stems from the importance of the issue involved, the resolution of which will have a direct and material impact upon the effectiveness of law enforcement. The question directly at issue—whether the imposition and carrying out of the sentence of death for the crime of first-degree murder of a police officer under the law of Louisiana violates the Eighth and Fourteenth Amendments to the Constitution of the United States—raises important legal and practical problems for police officers nationwide.

Police officers (and other law enforcement officers) constitute the sole line of defense between society and its criminal elements. They deserve the full measure of protection of the law. This is the area wherein our interest lies.

Respectfully submitted,

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ARGUMENT.

I. The Narrowly Drawn Louisiana Statute Which Provides a Mandatory Death Penalty for the Killing of a Peace Officer Does Not Violate the Eighth and Fourteenth Amendments to the Constitution of the United States.

Amici will not reiterate the legal arguments made by the Respondent State of Louisiana in the instant case, although we agree with and wish to associate ourselves with them. We will

confine our argument to one point: the crime of murder of a police officer, as it is narrowly defined in the Louisiana statute,[1] is so heinous that there can be no circumstances in mitigation for the crime; or, phrased another way, the lack of a specific provision for mitigating circumstances in the capital murder of a police officer statute under review should not render it constitutionally infirm.

In the case of *Stanislaus Roberts* v. *Louisiana*,[2] a plurality of this Court held that the mandatory death penalty statute of the State of Louisiana was violative of the Eighth and Fourteenth Amendments to the Constitution of the United States, principally because the law provided:

> . . . no meaningful opportunity for consideration of mitigating factors presented by the circumstances of the particular crime or by the attributes of the particular offender.[3]

The decision in *Stanislaus Roberts* struck down five classes of first-degree murder which required a mandatory death sentence in Louisiana.[4] Among them was the following provision:

> No. 30 First degree murder.
>
> First degree murder is the killing of a human being:

1. La. Rev. Stat. Ann. 14:30 (2) (1973).

2. Because the surname of the defendant in the instant case is identical with that of the defendant in the earlier case of *Roberts* v. *Louisiana*, ... U. S. ....., 96 S. Ct. 3001 (1976) we will refer in this brief to both the given name and surname of the two. *Harry Roberts* v. *Louisiana*, is the style of the instant case, *Stanislaus Roberts* v. *Louisiana*, the earlier one.

3. *Stanislaus Roberts* v. *Louisiana*, ... U. S. ..... at ....., 96 S. Ct. 3001 at 3006 (1976). The term "plurality" is used because only Justices Stewart, Powell and Stevens held the statute unconstitutional in that the death sentence for capital murder was *mandatory*.

Mr. Justice Brennan and Mr. Justice Marshall concurred with the plurality because of their views that capital punishment is *per se* cruel and unusual under the Eighth and Fourteenth Amendments to the Constitution of the United States. The Chief Justice, Mr. Justice White, Mr. Justice Blackman and Mr. Justice Rehnquist dissented in *Stanislaus Roberts* on the grounds that narrowly drawn mandatory death penalty statutes are not unconstitutional.

4. La. Rev. Stat. Ann. 14:30 (1974).

> (2) When the offender has a specific intent to kill, or to inflict great bodily harm upon, a fireman or a peace officer who was engaged in the performance of his lawful duties . . .[5]

Stanislaus Roberts and its companion case, *Woodson* v. *North Carolina*[6] appeared to hold with finality that mandatory death penalties which did not take into consideration circumstances in mitigation of the crime were *per se* unconstitutional. However, on December 1, 1976 this Court certified the question in the instant case:

> Whether the imposition and carrying out of the sentence of death for the crime of first-degree murder of a police officer under the law of Louisiana violates the Eighth and Fourteenth Amendments to the Constitution of the United States.[7]

We can only conclude that this Court is now willing to reconsider the question of the constitutionality of narrowly drawn mandatory death penalty statutes which deal with specific and particularly heinous crimes, even though mitigating circumstances for the crime are not spelled out in the statute.

If this be the case, we can think of no more appropriate vehicle for review than the instant case. It involves the wilful and unprovoked murder of one police officer, and the wounding of another, by Petitioner, Harry Roberts, as the officers ap-

5. *Ibid*, subsection (2).

6. .....U. S. ....., 96 S. Ct. 2978 (1976).

7. 20 Cr. L. 4083 (December 1, 1976). Actually, the Louisiana Statute makes capital the murder of a *peace* officer defined as:

> . . . any constable, sheriff, deputy sheriff, local or state policeman, game warden, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, district attorney, assistant district attorney or district attorney's investigator. La. Rev. Stat. Ann. 14:30 (1974).

While we agree that each of the enumerated classes of officers designated as "peace officers" in the statute are properly included in that definition, the express language in the order granting review in the instant case refers specifically to "police" officers. 20 Cr. L. 4083 (December 1, 1976). Accordingly, we feel constrained to limit our argument herein to those cases, such as the instant case, in which a police officer (or deputy sheriff) was killed.

proached him after he had fired blindly into a crowd and wounded a 13-year-old boy.

A careful reading of *Stanislaus Roberts* and *Woodson, supra,* leads to the conclusion that the principal reason that the mandatory death penalty statutes failed to pass constitutional muster was the fact that no provision had been made for consideration of mitigating circumstances. However, we submit that certain narrowly defined categories of a murder are so heinous that, by their very nature they preclude the presence of mitigating circumstances, or *at least* any such circumstances which would render the mandatory nature of the penalty constitutionally invalid.

Such a statute is the capital murder of a police officer statute of the State of Louisiana which is under review in the instant case. Our analysis of the factors which we believe to support this contention will be divided into three separate but intertwined elements: the narrowness of the statute, the state of mind of the murderer and the status of police officers in our society, all of which preclude the presence of mitigating circumstances or at least those of sufficient constitutional importance and validity as to prohibit the mandatory death penalty.

A. The Crime of Capital Murder of a Police Officer Has Been Defined with Sufficient Narrowness and Specificity by the State of Louisiana to Preclude Mitigating Circumstances.

The Louisiana statute defining capital murder of a police officer is *very* narrowly drawn. It is only applicable if the prosecution can prove, beyond a reasonable doubt, that: 1) there was a *specific* intent to kill the police officer (or to inflict great bodily harm which resulted in the officer's death) and, 2) the officer was in the performance of his *lawful* duties.

We do not contend that there can *never* be mitigating circumstances in the killing of a police officer, horrifying as all such crimes may be; we merely contend that such circumstances, if they existed, would rule out a conviction for capital murder

under the statute. We concede that certain factual situations could reduce the killing of a police officer to a crime of lesser degree: accidental killing, lack of knowledge that the victim was a police officer, the fact that the police officer was not engaged in the performance of his official duties, and misconduct on the part of the officer.

But these are precisely the kinds of mitigating circumstances that the Louisiana statute, by its carefully drawn narrowing of the definition of capital murder of a police officer, has taken into consideration. If these circumstances were present, no conviction for capital murder would lie.

This contention can be illustrated with hypothetical examples:

1. The offender, in the commission of an armed robbery, is surprised by a policeman. He flees, dropping his pistol which accidentally discharges, killing the officer. There would be no "specific intent" to kill the officer as required by the statute, hence the crime would not be capital murder.
2. The offender, a narcotics dealer, shoots and kills an undercover police officer, not knowing that the victim is a police officer, in the belief that he is a "rip-off artist" who is going to rob him of his narcotics or money. Although the offender would be guilty of murder, it would again seem clear that the "specific intent" language in the statute would bar a verdict of capital murder.
3. A police officer engages in a quarrel with his neighbor, unrelated to his duties, draws his gun, and the neighbor shoots and kills the officer in self-defense or perhaps in a struggle over the gun. However the factual situation in such a case were to be resolved, a verdict of capital murder would necessarily be precluded, because the officer was not in the performance of his duties.

4. An officer, off duty but armed, is intoxicated in a bar and gets into an altercation with a noisy patron with a resultant fatal injury to the officer. This situation could not invoke the capital murder provision because the officer, being intoxicated, would not have been in the *lawful* performance of his duties.

The Louisiana statute by its very narrow terms has, indeed, taken into consideration the principal mitigating circumstances involved in the killing of a police officer, at least those which might be of constitutional dimension in determining the validity of a mandatory death sentence.

Thus, we are left with the fact that Louisiana seeks to punish as capital murderers *only* those who wilfully, knowingly and with specific intent kill police officers in the performance of their lawful duties.

B. The State of Mind of Those Who Would Be Convicted of Capital Murder Under the Louisiana Statute Would, by Definition, Be Such That There Could Be No Mitigating Circumstances in a Given Case.

Mr. Justice Stewart, writing for the plurality in *Stanislaus Roberts*, cautioned that constitutional death penalty statutes must take into consideration the ". . . attributes of the particular offender."[8] If we assume that the State of Louisiana does not execute persons who are legally insane or of such tender age as to raise constitutional questions about the degree of punishment, which it does not;[9] the question of the "attributes" of the offender boil down to his state of mind at the time of the murder.

Our contention is that an individual who murders a police officer within the purview of the Louisiana statute can have only one of two states of mind: he murders to keep from being detected or arrested for some previous crime or to escape from

8. ..... U. S. ..... at ....., 96 S. Ct. 3001 at 3006 (1976).
9. La. Rev. Stats. 14:13, 14:14 (1942).

custody; or he kills the officer simply because the victim *is* a law enforcement officer. If either of these states of mind are present, we submit that there can be no further circumstances in mitigation, certainly not those that would rise to a constitutional level.

The *Uniform Crime Reports* of the Federal Bureau of Investigation break down situations in which law enforcement officers are feloniously (as opposed to accidentally) killed, into eleven categories.

Of 1,203 officers murdered between 1966 and 1975, the breakdown by type of law enforcement activity is as follows:

1) Responding to disturbance calls (family quarrels, man with gun, etc.) 157
2) Burglaries in progress or pursuing burglary suspects 65
3) Robberies in progress or pursuing robbery suspects 205
4) Attempting other arrests (excluding arrests for burglaries and robberies) 239
5) Handling, transporting, custody of prisoners 47
6) Investigating suspicious persons or circumstances..73
7) Traffic pursuits and stops 105
8) Civil disorders (mass disobedience, riots, etc.)...12
9) Handling mentally deranged persons 38
10) Ambush (entrapment and premeditation) 40
11) Ambush (unprovoked attack) .....42[10]

The first nine of these categories are situations in which law enforcement officers have come into confrontations with criminal suspects in some form of legitimate and necessary law enforcement activity and were murdered by those suspects. The

10. Clarence Kelley, "Crime in the United States, 1975," *Uniform Crime Reports*, Federal Bureau of Investigation, United States Department of Justice, Washington, D. C., August 25, 1976, p. 266.

conclusion is inescapable that had the slain officers not been acting in the lawful performance of their duties they would not have been killed.

Conversely, if the murders had *not* been engaged in some sort of illegal activity—the commission of a felony, fleeing from the scene of a felony, creating a disturbance or public menace, attempting to escape from custody, and so on—it is reasonable to assume that they would not have killed the officers.[11]

The principal motivating factor in all, or certainly in most, of these murders was sheer expediency on the part of the murderer: to avoid investigation, detection, apprehension, or, if apprehended, to escape.[12] The murder was committed simply to further the ends of the criminal; and if this state of mind on the part of the murderer exists, nothing can possibly be offered in mitigation.

Recent years have revealed yet another motivation for the murder of law enforcement officers: the fact that they *are* law enforcement officers. Categories 10 and 11 of police killings described above at page 7, concern ambush attacks on policemen: cases in which the officer was murdered in a premeditated, or at least an unprovoked, attack, for no other reason than the fact that he represented authority. There were 82 ambushes between 1966 and 1975 and, significantly, the number of such attacks rose from 29 between 1966 and 1970, to 53 between 1970 and 1975, almost double the number over the prior 5 years.[13]

11. The "Handling of Mentally Deranged Persons" classification of fatalities might well be excluded from this analysis; but this would have little bearing on our argument about the state of mind of the offenders, because the mentally deranged would generally be unable to form the specific intent for capital murder.

12. We believe that some credence may be given to this contention based on the fact that of 1,438 persons identified in the killing of law enforcement officers between 1966 and 1975, 76% had records of prior arrests or criminal charges and 56% had been convicted. They had had prior brushes with the criminal process, and arguably, they wanted to avoid repeating this situation. *Uniform Crime Reports, op. cit., supra,* ft. 10 p. 230.

13. *Ibid,* p. 226.

These are the kinds of attacks from which *no* police officer, no matter how alert or "street-wise" he may be, can protect himself. A policeman responding to a robbery-in-progress call can at least take certain precautions; a policeman walking into a house in response to a call for help cannot possibly know that a booby-trapped suitcase full of dynamite is awaiting him.[14]

Concededly, not *every* case involving the murder of a policeman can be neatly categorized into the two classifications which we have postulated: killing to avoid detection or arrest, or to escape; and killing because the victim happens to be a symbol of authority. However, the available data leads to the conclusion that *most* police killings fit into one of the two categories, and these are the murders that cannot be ameliorated.

The important point in our argument on this issue is that the Louisiana statute has, by its terms, screened out every other sort of police killing by defining it as other than capital murder. The requirement in the statute of *specific intent* to kill a police officer and the requirement that the officer be engaged in pursuing his *lawful* duties militate against a capital murder verdict unless the killing was, in fact, in one of the two categories: murder to avoid apprehension or to escape or murder by ambush. If this narrowing of the definition of the offense is sufficient, so that *only* those crimes of murder against the *exercise* of constituted authority or against the *appearance* of that authority are punishable as capital, it should be held to be constitutional as a legitimate exercise of the state's police power.

As we have noted, the presence of mitigating circumstances and a due consideration of the character and propensities of the offender are extremely important elements in capital murder cases. We believe, however, that these elements, even when viewed most charitably in favor of the accused, become secondary when the only conceivable state of mind of the capital

14. *Cf.* The factual situation in *Wolff, Warden* v. *Rice,* ..... U. S. ....., 96 S. Ct. 3037 (1976), decided by this Court last term, in which just such an ambush attack took place.

murder defendant (as defined by the Louisiana statute) could be to kill the officer out of expediency or to murder him solely and specifically because of what he represents. In sum, the very definition by Louisiana of the crime of capital murder of a police officer precludes circumstances in mitigation, which might exist in more broadly defined capital murder cases. Even if mitigating circumstances, not covered by the statute should exist, they would be so slight that their absence should not require that the statute, or a provision of the statute be stricken on constitutional grounds.

C. The Status of Police Officers in Our Society Mandates That One Who Feloniously Murders a Police Officer Forfeits His Claim to Circumstances in Mitigation.

Inherent in our contention that the wilful murder of a police officer, as defined by the Louisiana statute, forecloses circumstances in mitigation of the crime, is the premise that law enforcement officers should enjoy a specially protected stature in the criminal justice system. One could legitimately ask: why? Why should we accord to the life of a police officer or deputy sheriff a greater value than, say, that of a shopkeeper who has been murdered in the course of an armed robbery?

The answer to this question is, first, that no *life* is more important than another. Proponents of capital punishment agree that it is precisely because human life is so sacred that he who wilfully and feloniously takes a human life should pay for it with his own in order to express society's outrage at the crime[15] and to deter would-be murderers in the future.[16]

We submit, however, that there is at least one group of individuals—police officers—whose status alone qualifies them for inclusion in a class deserving of special protection against the lawless and violent. One writer on the capital punishment issue has summed up our view succinctly:

15. See *Gregg* v. *Georgia*, ... U. S. ..... at ....., 96 S. Ct. 2909 at 2930 (1976). Mr. Justice Stewart writing for the majority.

16. *Ibid* at 2931.

> As for the murder of law enforcement officers and prison guards, it is unrealistic for society to raise and maintain organizations in order that they might protect it from violence without giving these organizations protection from the violent men they will be obliged to confront.[17]

The operative words are ". . . obliged to confront," and we believe that these words embody the argument that police officers are entitled to special protection in our system.

The commission of crimes is, of course, elective. No one is ever *forced* to murder, rape, rob or otherwise prey upon someone else. People do so however, and then the series of confrontations involved in criminal justice begins: the offender elects to victimize and the victim (unless he or she is lucky enough to escape or to subdue the assailant) becomes an involuntary participant.

The average citizen—a civilian, not a law enforcement officer —when confronted, as a witness, with the commission of a crime, through personal observation or information, has a series of options: 1) he can play the good Samaritan and personally intervene (often at the risk of his life or to his own safety); 2) he can report the matter to the authorities even if he does not personally intervene; or 3) he can go on about his business leaving the matter up to the victim and the perpetrator (which happens with increasing frequency) and there is no legally effective manner whereby the "I don't want to get involved" passerby can be held accountable for his dereliction of a moral, if not a legal, duty.

A police officer or deputy sheriff has no such options. If information relating to the commission of a crime comes to his attention he is *required*, first by reason of his oath of office, and, more practically, upon pain of dismissal, to confront the criminal. In the words of the Kentucky Court of Appeals:

17. Dame Rebecca West, "Capital Punishment," *New York Times*, April 1, 1973, op ed. page.

> If [an officer] refuses to answer [a trouble] call, he may be summarily dismissed from the force.[18]

It is the police officer, and *only* the police officer who *must* respond and confront the obvious dangers which inhere in his duty to protect the rest of society. As we have noted above in the ten year period between 1966 and 1975, 1,203 law enforcement officers in the United States were feloniously killed in the line of duty. The increase in the numbers of such killings is equally disturbing: in 1966, 57 law enforcement officers were murdered; by 1975 the total had risen to 129—an increase of over 100%.[19] *Murders* of police officers are by far the most visible, and tragic, of such crimes but, additionally, in 1975 alone, 44,867 assaults on law enforcement officers were reported.[20]

Given these two conditions: the known and probable dangers of police work, and the fact that no one *except* a policeman is required to actively seek out confrontation with criminals, we submit that it is neither unreasonable nor unconstitutional to afford them the extra measure of protection which is implicit in the Louisiana statute.

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18. *City of Harlan* v. *Ford*, 252 S. W. 2d 684 (Ky. App. 1952). See also:

    Stafford v. *Firemen's and Policemen's Civil Service Commission of City of Beaumont*, 355 S. W. 2d 555 (Tex. App. 1962) where the officer was dismissed for failing to report the activities of known prostitutes and vagrants.

    Bagat v. *Police Board of City of Chicago*, 238 N. E. 2d 829 (Ill. App. 1968) where the officer was properly dismissed for failing to respond to eleven radio calls.

    Marino v. *City of Los Angeles*, 110 Cal. Rptr. 45 (Cal. App. 1973) where the officer was properly dismissed for failing to take any action on two occasions when victims of serious crimes reported the criminal activity to him.

    Van Gerrewey v. *Chicago Police Board*, 340 N. E. 2d 29 (Ill. App. 1975) where the officer was properly dismissed for failing to report the known impending sale of marijuana.

19. *Uniform Crime Reports*, 1975, p. 223.

20. *Ibid*, p. 231.

That statute is narrowed to cases in which the killing is wilful, with specific intent, and the officer is in the performance of his lawful duties. The facts of the instant case present this situation squarely.

Harry Roberts was on the street during Mardi Gras in New Orleans in 1974. He had a loaded weapon and had fired blindly at his neighbors striking a 13-year-old boy. He was clearly a danger to the community. Officers Tobin and McInerney responded to the radio call, arriving at the scene within minutes. They were in uniform, there could have been no question of mistaken identity of the officers.

Roberts was still in sight as the patrol vehicle approached, it caught up with him, whereupon Roberts, firing first, shot Officer Tobin and shot at Officer McInerney. McInerney returned the fire (hitting Roberts in the leg) and Roberts then shot and killed him.[21]

It was the option of all of the civilians in the area to retreat to safer places when Roberts, by the prior shooting, had proclaimed himself a dangerous armed man. No such option was available to Officers Tobin and McInerney. They had received the call and they were required to approach, disarm and apprehend the suspect. Roberts, as noted, shot at them first and then killed one of the officers and wounded the other in the ensuing gun battle.

There were no mitigating circumstances to this crime. It fits precisely within the scope of the three arguments we have made in this section:

1. There was no possibility of accident, mistake or abuse of police authority involved in the killing;
2. The state of mind of Harry Roberts could have been *only* to kill, or cause great bodily harm to, the police officers in order to effectuate his escape; and

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21. *State* v. *Roberts*, 231 So. 2d 12, 13 (1976).

3. The same criminal justice system that *required* Officers McInerney and Tobin to respond to the "man with a gun call" should be utilized to protect them.

It might well be said that this kind of crime was precisely what the legal draftsmen of the Louisiana capital murder of a police officer statute had in mind when La. Rev. Stat. Ann. 14:30 (2) was enacted. Only this kind of criminal behavior would fit within the purview of that statute.

We urge this Court to uphold the statute in question and consequently to decide that the mandatory death sentence of petitioner Harry Roberts did not violate the Eighth and Fourteenth Amendments to the Constitution of the United States.

CONCLUSION.

Certain mandatory capital punishment statutes may be constitutionally infirm because they contain no provision for consideration of circumstancse in mitigation of the offense. We submit, however, that the Louisiana Statute in question contains no such constitutional infirmity for two reasons: 1) it is so narrowly drawn that, by its terms, it precludes traditional circumstances in mitigation; and, 2) the crime that the statute seeks to make capital, murder of a police officer, is so heinous that there can be no circumstances in mitigation, at least none which rise to constitutional dimension.

For these reasons we respectfully urge the Court to uphold the decision of the Supreme Court of the State of Louisiana.

Respectfully submitted,

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